THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.4862 OF 2005

Dated: 04th APRIL, 2006.

Between:

Kakatiya Agro Products & Oils Limited,
Rep. by its Managing Director,
Sri P.Nagabhushanam, having its regd. Office
at 3/184, Pandaripuram, Chilakaluripet-522 616,
Guntur District. .. Petitioner

And

1. The Govt. of A.P., rep. by its Principal Secretary,
   Industries & Commerce (IP) Department,
   Secretariat Bldgs., Hyderabad and
   4 others. … Respondents

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ORDER :

The writ petitioner - M/s. Kakatirya Agro Products and Oils Limited - is a company registered under the provisions of the Companies Act. It is stated that the petitioner unit became sick in the year 2000-2001 and several steps were taken to revive the same. While so, the Government of A.P. issued G.O.Ms.No.359, Industries & Commerce (IP) Department, dated 25-6-2001 formulating a Scheme for revival of small scale sick units. The said Scheme, known as 'A.P. Small Scale Industries Revival Scheme' (APSSIRS), was made applicable to industrial units, ancillary units in the manufacturing sector whose total investment in plant and machinery exceeds Rs.5 lakhs by sanctioning number of non-fiscal and fiscal concessions and reliefs to sick industries.

It is not in dispute that the dues payable to all statutory authorities including A.P. TRANSCO were brought within the purview of the said scheme. A special cell was constituted for implementation of the said scheme. The special cell, consisting of 21 members, includes the Member Secretary of A.P. TRANSCO.

The petitioner got itself registered under the said Scheme and in the meeting held on 8-11-2004 presided over by the Commissioner of Industries, A.P., Hyderabad, so far as the petitioner herein is concerned, it was decided as under :

> *(i) APSPDCL has to waive the minimum charges for the closure period as per the G.O.Ms.No.359, Inds. & Com. (IP) Department, dated 25-6-2001.*
>
> *(ii) The unit holder has been requested to approach the Joint Commissioner of Sales Tax Dept., with an appeal.*
>
> *(iii) A letter has to be addressed to the P.F. authorities to allow the unit holder for payment of dues in installments.*

It was also recorded in the said minutes of the meeting that in respect of waiver of minimum current consumption charges, the representatives of the Southern Power Distribution Company Limited (SPDCL) had informed that the minimum consumption charges can be waived provided the same is reimbursed by the

Government. In pursuance thereof, the Committee took a decision to address a letter to the Government to take up the issue with appropriate authorities to allow the DISCOMS to waive the minimum consumption charges during the closure period of the small scale industrial units for revival.

While so, the 1st respondent having considered the request of the petitioner vide proceedings dated 31-12-2004 permitted the petitioner to pay the consumption charges in installments by giving a time-bound programme subject to certain conditions specified thereunder. In the said letter, the arrears of CC charges from December, 2004 to May, 2004 were shown as Rs.42,46,789-12 ps and the arrears of CC charges from June, 2004 to September, 2004 were shown as Rs.6,59,564/-. The petitioner states that in compliance with the said order, they paid a sum of Rs.7 lakhs towards 1st installment along with a sum of Rs.300/- towards reconnection charges on 9-1-2005. Accordingly, on 11-1-2005 the power was released and the petitioner started the unit on 16-1-2005. The petitioner also paid the 2nd installment on 8-2-2005. Thereafter, the 3rd installment of Rs.10 lakhs was required to be paid on or before 28-2-2005. While so, the petitioner made a representation dated 28-2-2005 requesting the 1st respondent to grant some more time and in the meanwhile not to disconnect the power supply. Thereafter, the present writ petition was filed on 10-3-2005 seeking a declaration that the action of the respondents in not extending all the benefits given to the petitioner under G.O.Ms.No.359, dated 25-6-2001 is arbitrary and illegal, and for a consequential direction not to disconnect the power supply to the petitioner.

This Court while directing Rule Nisi, by order dated 11-3-2005 in W.P.M.P.No.6465 of 2005 directed the respondents to supply the power to the petitioner unit subject to the condition that the 3rd installment which fell due on 28-2-2005 is deposited within one week, in default granting liberty to the respondents to proceed in accordance with law. It is not in dispute that the petitioner paid the said 3rd installment of Rs.10 lakhs on 19-3-2005.

I have heard the learned Counsel for the petitioner as well as the learned Standing

Counsel appearing for the respondents.

The petitioner claims that apart from the amounts paid in terms of the decision taken by the committee under A.P. Small Scale Industries Revival Scheme under G.O.Ms.No.359, dated 25-6-2001, the petitioner had also paid a sum of Rs.10,50,000/- towards development charges and a further sum of Rs.3,54,414/- towards arrears apart from a sum of Rs.10,48,260/- towards security deposit to the respondents 2 to 4. It is contended that in view of the benefits conferred under G.O.Ms.No.359, dated 25-6-2001 the respondents 2 to 4 ought not to have collected the said amounts. In the circumstances, the petitioner submitted representations dated 9-2-2004, 15-3-2004, 15-4-2004 and 4-12-2004 requesting for refund of developmental charges, however there was no response. That apart, the respondents 2 to 4 are also not entitled to collect minimum consumption charges during the closure period from 22-5-2004 to 11-1-2005 and also from September, 2002 to November, 2002 and April, 2003 to November, 2003 in the light of the provisions of G.O.Ms.No.359, dated 25-6-2001. It is also contended that the respondents 2 to 4 are not entitled to collect late payment charges and penal interest, towards which the respondents demanded a sum of Rs.17,42,750/-. Thus, according to the petitioner, if the abovesaid amounts which the petitioner is entitled for refund are taken into consideration, the petitioner need not pay any amount to the respondents 2 to 4.

So far as the proceedings of the 1st respondent dated 31-12-2004 are concerned, it is contended that the current consumption charges demanded thereunder were incorrect. At any rate, since the petitioner had already paid a sum of Rs.14 lakhs towards the installments in addition to the amounts that were already paid in excess, unless the actual amount payable by the petitioner is decided after giving necessary deductions and reliefs in terms of G.O.Ms.No.359, dated 25-1-2006, the respondents 2 to 4 cannot demand any further amounts from the petitioner under the threat of disconnection. It is contended that if the representations made by the petitioner are considered and the accounts are settled duly granting the reliefs under G.O.Ms.No.359, dated 25-6-2001 the petitioner is not liable to pay any mounts to the respondents 2 to 4.

In the counter-affidavit filed on behalf of the respondents, it is stated that the petitioner was given the concessions for payment of minimum charges and other concessions like off-seasonal benefits during discontinued period. That apart, the petitioner's request for waiver of minimum charges during the period of disconnection from 22-5-2004 to December, 2004 was also considered and a sum of Rs.6,69,983-99 ps was withdrawn from arrears. It is further stated that the HT agreement in the name of M/s. Kakatiya Agro Products and Oils Limited, Jonnathalli under HT Service Connection No.ONG 144 was terminated w.ef. 4-6-2000 and new HT service was released on 24-12-2001 in the same premises with HT Service Connection No.ONG 219 under the same name and style of Kakatiya Agro Products and Oils Limited on payment of security deposit of Rs.10,48,260/- and other charges. The petitioner had taken the said fresh HT service connection to avoid payment of monthly minimum charges during disconnection period. Since the petitioner has obtained a new service connection in connection with which Rs.10,48,260/- was paid towards security deposit, the same cannot be refunded under any circumstances. It is further stated that no monthly minimum charges were charged for the period for 10/2004 to 12/2004 (i.e.,) beyond 4 months of disconnection period, but the late payment charges were only levied on the arrears outstanding as on 22-5-2004. The monthly minimum charges for the period from 6/2004 to 9/2004 were charged at off seasonal concessions only during the disconnection period and the amounts already charged under normal tariff were revised and excess amount of Rs.4,79,054-30 ps were withdrawn apart from Rs.3,00,490/- withdrawn towards excess demand raised form 22-9-2004 to 20-10-2004 beyond the 4 months period of disconnection.

The respondents have denied the allegation that the calculation of the arrears of CC charges as shown in the proceedings dated 31-12-2004 were incorrect and stated that as a matter of fact maximum concessions were already given to the petitioner. It is also stated that the respondents 2 to 4 never harassed the petitioner and that since the petitioner failed to pay the consumption charges for February, 2005 and March, 2005 to the tune of Rs.12,45,349/- and Rs.9,53,026/- respectively, the power supply was disconnected on 25-3-2005. Hence, the writ petition is misconceived and liable to be dismissed.

From the pleadings of the petitioner as well as the respondents 1 to 4, it is clear that the petitioner obtained a fresh HT Service connection (ONG.219) on 24-12-2001. The sum of Rs.10,50,000/- paid by the petitioner was towards the developmental charges under the new service connection which is still subsisting. Therefore, the respondent contends that the said amount cannot be refunded. The fact that the earlier service connection i.e. HT Service Connection No.144 stood terminated w.e.f. 4-6-2000 has not been disputed by the petitioner. Thus, it is clear that what was considered under the A.P. Small Scale Industrial Revival Scheme under G.O.Ms.No.359, dated 25-6-2001, was only with regard to the waiver of minimum charges for the closure period under new Service Connection i.e., the HTSC. No.219. The respondents state that maximum concessions were allowed to the petitioner for payment of CC charges as per terms and conditions apart from waiving the minimum charges during the period of disconnection from June, 2004 to December, 2004. At any rate, having agreed the installments fixed under the proceedings of the 1st respondent dated 31-12-2004 with regard to payment of CC charges under HT Service Connection No.219 and having paid two installments, the dispute raised in the present writ petition with regard to the calculations mentioned in the said proceedings dated 31-12-2004 appears to be only an attempt to gain time.

That apart, the material on record makes it clear that the relief granted in terms of G.O.Ms.No.359, dated 25-6-2001 was only towards the waiver of minimum charges for the closure period. As a matter of fact, in the minutes of the meeting dated 8-11-2004 itself, it was recorded that in respect of waiver of minimum CC charges the representatives of SPDCL informed that the minimum CC charges can be waived provided the same is reimbursed by the Government and after detailed discussion the Committee had decided to address a letter to the Government to take up the issue with the appropriate authorities to allow the DISCOMS to waive the minimum CC charges during closure period of the small scale industrial units for revival. Nothing has been placed before this Court to show that the Government passed any such orders allowing DISCOMS to waive the minimum CC charges

during the closure period. Hence, it cannot be said that the decision of the Committee, dated 8-11-2004 was binding on the respondents 2 to 4. At any rate, since admittedly the scheme under G.O.Ms.No.359, dated 25-6-2001 has no statutory force, even assuming that the petitioner was not granted some of the benefits under the said scheme, it cannot be said that the petitioner has acquired any legal right to enforce the provisions of G.O.Ms.No.359, dated 25-6-2001 by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Hence, the Mandamus as prayed for cannot be granted.

For the aforesaid reasons, the Writ Petition is misconceived and accordingly dismissed. No costs.

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G. ROHINI, J.

Dt. 04–04-2006

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